

Parties and Recital Page(s)¹
Agreement between
City of Chula Vista
and
[Name of Consultant]²

for [type of services, i.e., Sewer Consulting Services]

This agreement ("Agreement")³, dated _____ for the purposes of reference only, and effective as of the date last executed unless another date is otherwise specified in Exhibit A, Paragraph 1, is between the City-related entity as is indicated on Exhibit A, Paragraph 2, as such ("City"), whose business form is set forth on Exhibit A, Paragraph 3, and the entity indicated on the attached Exhibit A, Paragraph 4, as Consultant, whose business form is set forth on Exhibit A, Paragraph 5, and whose place of business and telephone numbers are set forth on Exhibit A, Paragraph 6 ("Consultant"), and is made with reference to the following facts:

Recitals⁴

Whereas, _____; and,

Whereas, _____; and,

Whereas, Consultant warrants and represents that they are experienced and staffed in a manner such that they are and can prepare and deliver the services required of Consultant to City within the time frames herein provided all in accordance with the terms and conditions of this Agreement;

(End of Recitals. Next Page starts Obligatory Provisions.)

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1. This page will need to be special for each contract.
 2. Brackets are a prompt to imply that a substitution of information is called for.
 3. Use this parenthetical technique to define terms or concepts to shorten references to them later in the Agreement.
 4. Use the recitals to define terms or concepts to shorten references to them later in the Agreement. If property is involved in the agreement, a typical "whereas" clause may be included:

"Whereas, the property which is the subject matter of this Agreement is commonly known as _____, and is legally described as set forth in the attached Exhibit _____ ("Property"); and,"

Obligatory Provisions Pages

NOW, THEREFORE, BE IT RESOLVED that the City and Consultant do hereby mutually agree as follows:

1. Consultant's Duties

A. General Duties

Consultant shall perform all of the services described on the attached Exhibit A, Paragraph 7, entitled "General Duties"; and,

B. Scope of Work and Schedule

In the process of performing and delivering said "General Duties", Consultant shall also perform all of the services described in Exhibit A, Paragraph 8, entitled "Scope of Work and Schedule", not inconsistent with the General Duties, according to, and within the time frames set forth in Exhibit A, Paragraph 8, and deliver to City such Deliverables as are identified in Exhibit A, Paragraph 8, within the time frames set forth therein, time being of the essence of this agreement. The General Duties and the work and deliverables required in the Scope of Work and Schedule shall be herein referred to as the "Defined Services". Failure to complete the Defined Services by the times indicated does not, except at the option of the City, operate to terminate this Agreement.

C. Reductions in Scope of Work

City may independently, or upon request from Consultant, from time to time reduce the Defined Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction in the compensation associated with said reduction.

D. Additional Services

In addition to performing the Defined Services herein set forth, City may require Consultant to perform additional consulting services related to the Defined Services ("Additional Services"), and upon doing so in writing, if they are within the scope of services offered by Consultant, Consultant shall perform same on a time and materials basis at the rates set forth in the "Rate Schedule" in Exhibit A, Paragraph 10(C), unless a separate fixed fee is otherwise agreed upon. All compensation for Additional Services shall be paid monthly as billed.

E. Standard of Care

Consultant, in performing any Services under this agreement, whether Defined Services or Additional Services, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.

F. Insurance

Consultant must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the Consultant, his agents, representatives, employees or subcontractors and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance

Coverage must be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (2) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (4) Professional Liability or Errors & Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

Contractor must maintain limits no less than:

- | | |
|---|--|
| 1. General Liability:
(Including operations,
products and completed
operations, as applicable) | \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. |
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage. |
| 3. Workers' Compensation
Employer's Liability: | Statutory
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| 4. Professional Liability or
Errors & Omissions
Liability: | \$1,000,000 each occurrence |

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The general liability, automobile liability, and where appropriate, the worker's compensation policies are to contain, or be endorsed to contain, the following provisions:

- (1) The City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant, where applicable, and, with respect to liability arising out of work or operations performed by or on behalf of the Consultant, including providing materials, parts or equipment furnished in connection with such work or operations. The general liability additional insured coverage must be provided in the form of an endorsement to the contractor's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products/Completed Operations coverage.
- (2) The Consultant's General Liability insurance coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of the contractor and in no way relieves the contractor from its responsibility to provide insurance.
- (3) The insurance policy required by this clause must be endorsed to state that coverage will not be canceled by either party, except after thirty (30) days' prior written notice to the City by certified mail, return receipt requested.
- (4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- (5) Consultant's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage during the life of this contract.

If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are written on a claims-made form:

- (1) The "Retro Date" must be shown, and must be before the date of the contract or the beginning of the contract work.
- (2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

(3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

(4) A copy of the claims reporting requirements must be submitted to the City for review.

Acceptability of Insurers

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers ("LESLI") with a current A.M. Best's rating of no less than A X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Subcontractors

Consultants must include all subconsultants as insureds under its policies or furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants are subject to all of the requirements included in these specifications.

G. Security for Performance

(1) Performance Bond

In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Performance Bond (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Performance Bond"), then Consultant shall provide to the City a performance bond in the form prescribed by the City and by such sureties which are authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, <http://www.fms.treas.gov/c570>, and whose underwriting limitation is sufficient to issue bonds in the amount required by the agreement, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulations. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the

limits so required. Form must be satisfactory to the Risk Manager or City Attorney which amount is indicated in the space adjacent to the term, "Performance Bond", in said Exhibit A, Paragraph 18.

(2) Letter of Credit

In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Letter of Credit"), then Consultant shall provide to the City an irrevocable letter of credit callable by the City at their unfettered discretion by submitting to the bank a letter, signed by the City Manager, stating that the Consultant is in breach of the terms of this Agreement. The letter of credit shall be issued by a bank, and be in a form and amount satisfactory to the Risk Manager or City Attorney which amount is indicated in the space adjacent to the term, "Letter of Credit", in said Exhibit A, Paragraph 18.

(3) Other Security

In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide security other than a Performance Bond or a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Other Security"), then Consultant shall provide to the City such other security therein listed in a form and amount satisfactory to the Risk Manager or City Attorney.

H. Business License

Consultant agrees to obtain a business license from the City and to otherwise comply with Title 5 of the Chula Vista Municipal Code.

2. Duties of the City

A. Consultation and Cooperation

City shall regularly consult the Consultant for the purpose of reviewing the progress of the Defined Services and Schedule therein contained, and to provide direction and guidance to achieve the objectives of this agreement. The City shall permit access to its office facilities, files and records by Consultant throughout the term of the agreement. In addition thereto, City agrees to provide the information, data, items and materials set forth on Exhibit A, Paragraph 9, and with the further understanding that delay in the provision of these materials beyond thirty (30) days after authorization to proceed, shall constitute a basis for the justifiable delay in the Consultant's performance of this agreement.

B. Compensation

Upon receipt of a properly prepared billing from Consultant submitted to the City periodically as indicated in Exhibit A, Paragraph 17, but in no event more frequently than monthly, on the day of the period indicated in Exhibit A, Paragraph 17, City shall compensate Consultant for all services rendered by Consultant according to the terms and conditions set forth

in Exhibit A, Paragraph 10, adjacent to the governing compensation relationship indicated by a "checkmark" next to the appropriate arrangement, subject to the requirements for retention set forth in Paragraph 18 of Exhibit A, and shall compensate Consultant for out of pocket expenses as provided in Exhibit A, Paragraph 11.

All billings submitted by Consultant shall contain sufficient information as to the propriety of the billing to permit the City to evaluate that the amount due and payable thereunder is proper, and shall specifically contain the City's account number indicated on Exhibit A, Paragraph 17(C) to be charged upon making such payment.

3. Administration of Contract

Each party designates the individuals ("Contract Administrators") indicated on Exhibit A, Paragraph 12, as said party's contract administrator who is authorized by said party to represent them in the routine administration of this agreement.

4. Term

This Agreement shall terminate when the Parties have complied with all executory provisions hereof.

5. Liquidated Damages

The provisions of this section apply if a Liquidated Damages Rate is provided in Exhibit A, Paragraph 13.

It is acknowledged by both parties that time is of the essence in the completion of this Agreement. It is difficult to estimate the amount of damages resulting from delay in performance. The parties have used their judgment to arrive at a reasonable amount to compensate for delay.

Failure to complete the Defined Services within the allotted time period specified in this Agreement shall result in the following penalty: For each consecutive calendar day in excess of the time specified for the completion of the respective work assignment or Deliverable, the Consultant shall pay to the City, or have withheld from monies due, the sum of Liquidated Damages Rate provided in Exhibit A, Paragraph 13 ("Liquidated Damages Rate").

Time extensions for delays beyond the Consultant's control, other than delays caused by the City, shall be requested in writing to the City's Contract Administrator, or designee, prior to the expiration of the specified time. Extensions of time, when granted, will be based upon the effect of delays to the work and will not be granted for delays to minor portions of work unless it can be shown that such delays did or will delay the progress of the work.

6. Financial Interests of Consultant

A. Consultant is Designated as an FPPC Filer

If Consultant is designated on Exhibit A, Paragraph 14, as an "FPPC filer", Consultant is deemed to be a "Consultant" for the purposes of the Political Reform Act conflict of interest and disclosure provisions, and shall report economic interests to the City Clerk on the required Statement of Economic Interests in such reporting categories as are specified in Paragraph 14 of Exhibit A, or if none are specified, then as determined by the City Attorney.

B. Decline to Participate

Regardless of whether Consultant is designated as an FPPC Filer, Consultant shall not make, or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement.

C. Search to Determine Economic Interests

Regardless of whether Consultant is designated as an FPPC Filer, Consultant warrants and represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as the term is used in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic interest which would conflict with Consultant's duties under this agreement.

D. Promise Not to Acquire Conflicting Interests

Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will not acquire, obtain, or assume an economic interest during the term of this Agreement which would constitute a conflict of interest as prohibited by the Fair Political Practices Act.

E. Duty to Advise of Conflicting Interests

Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will immediately advise the City Attorney of City if Consultant learns of an economic interest of Consultant's that may result in a conflict of interest for the purpose of the Fair Political Practices Act, and regulations promulgated thereunder.

F. Specific Warranties Against Economic Interests

Consultant warrants and represents that neither Consultant, nor Consultant's immediate family members, nor Consultant's employees or agents ("Consultant Associates") presently have any interest, directly or indirectly, whatsoever in any property which may be the subject matter of the Defined Services, or in any property within 2 radial miles from the exterior boundaries of any property which may be the subject matter of the Defined Services, ("Prohibited Interest"), other than as listed in Exhibit A, Paragraph 14.

Consultant further warrants and represents that no promise of future employment, remuneration, consideration, gratuity or other reward or gain has been made to Consultant or

Consultant Associates in connection with Consultant's performance of this Agreement. Consultant promises to advise City of any such promise that may be made during the Term of this Agreement, or for twelve months thereafter.

Consultant agrees that Consultant Associates shall not acquire any such Prohibited Interest within the Term of this Agreement, or for twelve months after the expiration of this Agreement, except with the written permission of City.

Consultant may not conduct or solicit any business for any party to this Agreement, or for any third party that may be in conflict with Consultant's responsibilities under this Agreement, except with the written permission of City.

7. Hold Harmless

Consultant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers and employees, from and against all claims for damages, liability, cost and expense (including without limitation attorneys fees) arising out of or alleged by third parties to be the result of the negligent acts, errors or omissions or the willful misconduct of the Consultant, and Consultant's employees, subcontractors or other persons, agencies or firms for whom Consultant is legally responsible in connection with the execution of the work covered by this Agreement, except only for those claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence or sole willful misconduct of the City, its officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

With respect to losses arising from Consultant's professional errors or omissions, Consultant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers and employees, from and against all claims for damages, liability, cost and expense (including without limitation attorneys fees) except for those claims arising from the negligence or willful misconduct of City, its officers or employees.

Consultant's indemnification shall include any and all costs, expenses, attorneys fees and liability incurred by the City, its officers, agents or employees in defending against such claims, whether the same proceed to judgment or not. Consultant's obligations under this Section shall not be limited by any prior or subsequent declaration by the Consultant. Consultant's obligations under this Section shall survive the termination of this Agreement.

For those professionals who are required to be licensed by the state (e.g. architects, landscape architects, surveyors and engineers), the following indemnification provisions should be utilized:

(1) Indemnification and Hold Harmless Agreement

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising

out of any services performed involving this project, except liability for Professional Services covered under Section 7.2, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, or employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. This section in no way alters, affects or modifies the Consultant's obligation and duties under Section Exhibit A to this Agreement.

(2) Indemnification for Professional Services.

As to the Consultant's professional obligation, work or services involving this Project, the Consultant agrees to indemnify, defend and hold harmless the City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorneys fees, that arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the performance of services under this agreement, but this indemnity does not apply liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or defects in design by City or the agents, servants, or independent contractors who are directly responsible to City, or arising from the active negligence of City.

8. Termination of Agreement for Cause

If, through any cause, Consultant shall fail to fulfill in a timely and proper manner Consultant's obligations under this Agreement, or if Consultant shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to Consultant of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by Consultant shall, at the option of the City, become the property of the City, and Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused City by Consultant's breach.

9. Errors and Omissions

In the event that the City Administrator determines that the Consultants' negligence, errors, or omissions in the performance of work under this Agreement has resulted in expense to City greater than would have resulted if there were no such negligence, errors, omissions, Consultant shall reimburse City for any additional expenses incurred by the City. Nothing herein is intended to limit City's rights under other provisions of this agreement.

10. Termination of Agreement for Convenience of City

City may terminate this Agreement at any time and for any reason, by giving specific written notice to Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished and unfinished documents and other materials described hereinabove shall, at the option of the City, become City's sole and exclusive property. If the Agreement is terminated by City as provided in this paragraph, Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials to the effective date of such termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth herein.

11. Assignability

The services of Consultant are personal to the City, and Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without prior written consent of City.

City hereby consents to the assignment of the portions of the Defined Services identified in Exhibit A, Paragraph 16 to the subconsultants identified thereat as "Permitted Subconsultants".

12. Ownership, Publication, Reproduction and Use of Material

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole and exclusive property of City. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.

13. Independent Contractor

City is interested only in the results obtained and Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. City maintains the right only to reject or accept Consultant's work products. Consultant and any of the Consultant's agents, employees or representatives are, for all purposes under this Agreement, an independent contractor and shall not be deemed to be an employee of City, and none of them shall be entitled to any benefits to which City employees are entitled including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Therefore, City will not withhold state or federal income tax, social security tax or any other payroll tax, and Consultant shall be solely responsible for the payment of same and shall hold the City harmless with regard thereto.

14. Administrative Claims Requirements and Procedures

No suit or arbitration shall be brought arising out of this agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same.

Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

15. Attorney's Fees

Should a dispute arising out of this Agreement result in litigation, it is agreed that the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and court costs incurred. The "prevailing party" shall be deemed to be the party who is awarded substantially the relief sought.

16. Statement of Costs

In the event that Consultant prepares a report or document, or participates in the preparation of a report or document in performing the Defined Services, Consultant shall include, or cause the inclusion of, in said report or document, a statement of the numbers and cost in dollar amounts of all contracts and subcontracts relating to the preparation of the report or document.

17. Miscellaneous

A. Consultant not authorized to Represent City

Unless specifically authorized in writing by City, Consultant shall have no authority to act as City's agent to bind City to any contractual agreements whatsoever.

B. Consultant is Real Estate Broker and/or Salesman

If the box on Exhibit A, Paragraph 15 is marked, the Consultant and/or their principals is/are licensed with the State of California or some other state as a licensed real estate broker or salesperson. Otherwise, Consultant represents that neither Consultant, nor their principals are licensed real estate brokers or salespersons.

C. Notices

All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified herein as the places of business for each of the designated parties.

D. Entire Agreement

This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision hereof may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

E. Capacity of Parties

Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.

F. Governing Law/Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance hereunder, shall be the City of Chula Vista.

(End of page. Next page is signature page.)

Signature Page
to
Agreement between
City of Chula Vista
and
[Name of Consultant]

for _____

IN WITNESS WHEREOF, City and Consultant have executed this Agreement thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms:

Dated: _____

City of Chula Vista

By: _____
Cheryl Cox, Mayor

Attest:

Susan Bigelow, City Clerk

Approved as to form:

Ann Moore, City Attorney

Dated: _____

[Name of Consultant]

By: _____
[Name of Person, Title]

By: _____
[Name of Person, Title]

Exhibit List to Agreement
() Exhibit A.

Exhibit A
to
Agreement between
City of Chula Vista
and
[Name of Consultant]

1. Effective Date of Agreement: _____

2. City-Related Entity:

☐ City of Chula Vista, a municipal chartered corporation of the State of California

☐ Redevelopment Agency of the City of Chula Vista, a political subdivision of the State of California

☐ Industrial Development Authority of the City of Chula Vista, a

☐ Other: _____, a [insert business form]

("City")

3. Place of Business for City:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

4. Consultant:

5. Business Form of Consultant:

☐ Sole Proprietorship

☐ Partnership

☐ Corporation

6. Place of Business, Telephone and Fax Number of Consultant:

[Address]

[City], California 9 _____

Voice Phone: (619) _____

Fax Phone: (619) _____

7. General Duties:¹

8. Scope of Work and Schedule:

A. Detailed Scope of Work:²

B. Date for Commencement of Consultant Services:

() Same as Effective Date of Agreement

() Other: _____

C. Dates or Time Limits for Delivery of Deliverables:

Deliverable No. 1:

Deliverable No. 2:

Deliverable No. 3:

D. Date for completion of all Consultant services: _____

-
1. In a clear and straight forward fashion, describe what you want the Consultant to do on what project, or on what aspect of what project. E.g.:

Consultant shall design a bridge across the Otay River at the point where Otay Valley Road crosses said river, which design shall be to the specifications herein below provided or to standards set by the Public Works Director, and Consultant shall provide construction administration services if and when the bridge is eventually let for construction according to said design.

2. Do not include simply a letter or proposal from the consultant at this point because it will probably contain gratuitous comments or references to duties that will contradict the obligatory provisions of the standard agreement. List the detailed method by which you want the Consultant to accomplish the general duties.

9. Materials Required to be Supplied by City to Consultant:

10. Compensation:

A. ☐ Single Fixed Fee Arrangement.³

For performance of all of the Defined Services by Consultant as herein required, City shall pay a single fixed fee in the amounts and at the times or milestones or for the Deliverables set forth below:

Single Fixed Fee Amount: _____, payable as follows:

Milestone or Event or Deliverable

Amount or Percent of Fixed Fee

- ☐ 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 19 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Contractor shall have represented in writing that said percentage of completion of the phase has been performed by the Contractor. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

B. ☐ Phased Fixed Fee Arrangement.

For the performance of each phase or portion of the Defined Services by Consultant as are separately identified below, City shall pay the fixed fee associated with each phase of Services,

3. The difference between a single fixed fee amount with phased payments and a phased fixed fee amount is that, in a single fixed fee amount all of the work is required for all of the compensation. Payments are phased to help with consultant cash flow. In a phased fixed fee arrangement, the City has the authority to cancel or require performance under subsequent phases, so that the compensation is due just for the phase of work required, and not for the total amount.

in the amounts and at the times or milestones or Deliverables set forth. Consultant shall not commence Services under any Phase, and shall not be entitled to the compensation for a Phase, unless City shall have issued a notice to proceed to Consultant as to said Phase.

<u>Phase</u>	<u>Fee for Said Phase</u>
1.	\$ _____
2.	\$ _____
3.	\$ _____

- () 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 19 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Contractor shall have represented in writing that said percentage of completion of the phase has been performed by the Contractor. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

C. () Hourly Rate Arrangement

For performance of the Defined Services by Consultant as herein required, City shall pay Consultant for the productive hours of time spent by Consultant in the performance of said Services, at the rates or amounts set forth in the Rate Schedule herein below according to the following terms and conditions:

(1) () Not-to-Exceed Limitation on Time and Materials Arrangement

Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum Compensation amount, Consultant agrees that Consultant will perform all of the Defined Services herein required of Consultant for \$_____, including all Materials, and other "reimbursables" ("Maximum Compensation").

(2) () Limitation without Further Authorization on Time and Materials Arrangement

At such time as Consultant shall have incurred time and materials equal to _____ ("Authorization Limit"), Consultant shall not be entitled to any additional compensation without further authorization issued in writing and approved by the City. Nothing herein shall preclude Consultant from providing additional Services at Consultant's own cost and expense.

Rate Schedule⁴

Category of Employee	Name of Consultant	Hourly Rate
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

() Hourly rates may increase by 6% for services rendered after [month], 20____, if delay in providing services is caused by City.

11. Materials Reimbursement Arrangement

For the cost of out of pocket expenses incurred by Consultant in the performance of services herein required, City shall pay Consultant at the rates or amounts set forth below:

() None, the compensation includes all costs.

	Cost or Rate
() Reports, not to exceed \$ _____:	\$ _____
() Copies, not to exceed \$ _____:	\$ _____
() Travel, not to exceed \$ _____:	\$ _____
() Printing, not to exceed \$ _____:	\$ _____
() Postage, not to exceed \$ _____:	\$ _____
() Delivery, not to exceed \$ _____:	\$ _____
() Long Distance Telephone Charges, not to exceed \$ _____.	\$ _____
() Other Actual Identifiable Direct Costs:	\$ _____
_____, not to exceed \$ _____:	\$ _____
_____, not to exceed \$ _____:	\$ _____

4. This section should be completed in all cases--if the main compensation scheme is a "time and materials arrangement" or for the purposes of requiring Additional Services.

12. Contract Administrators:

City:⁵

Consultant:⁶

13. Liquidated Damages Rate:

☐ \$_____ per day.

☐ Other: _____

14. Statement of Economic Interests, Consultant Reporting Categories, per Conflict of Interest Code:

☐ Not Applicable. Not an FPPC Filer.⁷

☐ FPPC Filer

☐ Category No. 1. Investments and sources of income.

☐ Category No. 2. Interests in real property.

☐ Category No. 3. Investments, interest in real property and sources of income subject to the regulatory, permit or licensing authority of the department.

☐ Category No. 4. Investments in business entities and sources of income that engage in land development, construction or the acquisition or sale of real property.

☐ Category No. 5. Investments in business entities and sources of income of the type which, within the past two years, have contracted with the City of Chula Vista

5. Sample Completion:

Marilyn Poseggi, Environmental Review Coordinator, Public Services Building,
276 Fourth Avenue, Chula Vista, CA 91910, (619) 691-5104.

6. Same as address etc. on Exh. A, p.1, plus name of lead contact.

7. If Consultant, in the performance of its services under this agreement: (1) conducts research and arrives at conclusions with respect to its rendition of information, advice, recommendations or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendations or counsel, Consultant should not be designated as an FPPC Filer.

(Redevelopment Agency) to provide services, supplies, materials, machinery or equipment.

() Category No. 6. Investments in business entities and sources of income of the type which, within the past two years, have contracted with the designated employee's department to provide services, supplies, materials, machinery or equipment.

() Category No. 7. Business positions.

() List "Consultant Associates" interests in real property within 2 radial miles of Project Property, if any:

15. () Consultant is Real Estate Broker and/or Salesman

16. Permitted Subconsultants:

17. Bill Processing:

A. Consultant's Billing to be submitted for the following period of time:

- () Monthly
() Quarterly
() Other: _____

B. Day of the Period for submission of Consultant's Billing:

- () First of the Month
() 15th Day of each Month
() End of the Month
() Other: _____

C. City's Account Number: _____

18. Security for Performance

☐ Performance Bond, \$ _____

☐ Letter of Credit, \$ _____

☐ Other Security:

Type: _____

Amount: \$ _____

☐ Retention. If this space is checked, then notwithstanding other provisions to the contrary requiring the payment of compensation to the Consultant sooner, the City shall be entitled to retain, at their option, either the following "Retention Percentage" or "Retention Amount" until the City determines that the Retention Release Event, listed below, has occurred:

☐ Retention Percentage: _____%

☐ Retention Amount: \$ _____

Retention Release Event:

☐ Completion of All Consultant Services

☐ Other: _____